



In The
Supreme Court of the United States

No. 79-224

MICHAEL E. COLEMAN,

Petitioner,

vs.

GEORGE DARDEN, et al.,

Respondents.

PETITIONER'S REPLY BRIEF

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(1)

WHETHER 29 U.S.C. 791(b) AND/OR 5 C.F.R. 713.401(a) IMPLY A CAUSE OF ACTION AGAINST FEDERAL AGENCIES WAS RAISED IN PETITIONER'S COMPLAINT, EXPLICITLY RULED ON BY THE DISTRICT COURT, RAISED IN PETITIONER'S OPENING AND REPLY BRIEFS IN THE COURT OF APPEALS, AND SPECIFICALLY ADDRESSED IN ORAL ARGUMENT IN THE COURT OF APPEALS.

Respondents' opposition to this Court granting certiorari is based entirely on the theory that the implied cause of action issue was not raised in the Court of Appeals. This contention is a diaphanous attempt to justify the Court of Appeals' failure to address this issue and is a position clearly without any merit whatsoever.

First, Petitioner in his Complaint explicitly alleged an implied cause of action under 29 U.S.C. 791(b) and/or 5 C.F.R. 713.401.

Second, the District Court granted the Respondents' Motion to Dismiss Plaintiffs' claims under 29 U.S.C. 791(b), Section 501(b) of the Rehabilitation Act on the explicit grounds that 29 U.S.C. 791(b) does not, as a matter of law, imply a private cause of action against Federal agencies. (App. D to Petitioner's Petition)

Third, Petitioner's Opening Brief in the Court of Appeals stated in summary of issue number I that "the District Court erred in not implying a private

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cause of action from the explicit prohibitions of the Rehabilitation Act, 29 U.S.C. 701(8), 791(b), and 794." The Brief quotes the language of 791(b) and discusses this section at length, (Opening Brief, p. 11). The Opening Brief also sets out 5 C.F.R. 713.401, and argues by analogy to other sections of the Rehabilitation Act which have been construed to imply a private cause of action to redress physical handicap discrimination.

Fourth, Petitioner's Reply Brief in the Court of Appeals stated in part:

"Plaintiff's position is that the entire Rehabilitation Act of 1973, as amended, including Sections 29 U.S.C. 701(8) and 791(b), in conjunction with Civil Service Commission Regulation 713.401, and other implementing regulations, support an implied cause of action for physical handicap discrimination against federal employers" (Reply Brief, p.4)

Finally, Petitioner's counsel, in his oral argument before the Court of Appeals, clearly, repeatedly, and explicitly framed the issue in terms of whether 29 U.S.C. 791(b), and/or 5 C.F.R. 713.401 imply a private cause of action against Federal agencies.

CONCLUSION

Since it is clear and unmistakable that the issue of implied cause of action under 29 U.S.C. 791(b) and/or 5 C.F.R.

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713.401 was raised throughout these proceedings by Petitioner and explicitly ruled on by the District Court, Respondents' sole basis for opposition is without merit and the Petition For Writ of Certiorari should be granted.

Respectfully submitted,

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